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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1991, at 3 p.m.

Chairman: Mr. JOINET

later: Mrs. BAUTISTA

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The meeting was called to order at 3.15 p.m.

HUMAN RIGHTS AND DISABILITY (agenda item 12) (E/CN.4/Sub.2/1991/31)

1. Mr. KEILAU (Centre for Human Rights) recalled that the question of human rights and disability had been included in the Sub-Commission's agenda since 1984, when the Sub-Commission had, by its resolution 1984/20, appointed Mr. Leandro Despouy as Special Rapporteur to make a detailed study of the matter. At its forty-second session, the Sub-Commission had decided to postpone the debate on the item until its forty-third session. It therefore had before it the Special Rapporteur's final report, contained in document E/CN.4/Sub.2/1991/31, which was available in English and Spanish.

2. Mr. DESPOUY (Special Rapporteur) thanked the Secretariat for agreeing to have interpretation into deaf-and-dumb sign language provided during the debate on the agenda item under consideration. By way of introduction, he pointed out that, despite their handicaps, disabled persons could participate fully in the life of society, and sometimes did so brilliantly. In that connection it was sufficient to think of Mozart, Frida Kahlo, Helen Keller, Goya, Franklin D. Roosevelt or Stephen Hawking, the famous physicist who suffered from an incurable neuro-muscular disease but currently occupied the chair held by Isaac Newton at the University of Cambridge. At the moment there were more than 500 million disabled persons in the world, equivalent to 10 per cent of its total population, and in most countries at least 25 per cent of the population was directly or indirectly affected by disabilities. Those figures gave an idea of the extent of the problem, but not of its seriousness, since most disabled persons lived in difficult conditions on account of the physical and social obstacles which hindered their integration into the community and caused them to live marginal lives. That was why the study had been undertaken pursuant to Sub-Commission resolution 1984/20. It should, however, be pointed out that the international community had been concerned with the question for a long time, as was shown by the General Assembly's adoption, on 9 December 1975, of the Declaration on the Rights of Disabled Persons, following the 1971 Declaration on the Rights of Mentally Retarded Persons. Furthermore, in 1976 the General Assembly had proclaimed the year 1981 as the International Year of Disabled Persons, which had led to the elaboration of a World Programme of Action concerning Disabled Persons which the General Assembly had adopted in its resolution 37/52 and which was to be implemented as part of the United Nations Decade of Disabled Persons to be concluded in 1992 (paras. 10-14 of the report).

3. His original mandate had been to make a thorough study of the connection between violations of human rights and fundamental freedoms and disability and of all the forms of discrimination against disabled persons, as well as any relationship between apartheid and scientific experimentation and disability. However, the Sub-Commission had subsequently extended that mandate by requesting him to consider armed conflicts and other forms of violence and punishments such as amputation inflicted in certain countries as causal factors of disability, to study the particularly serious and complex problems that could arise from disability in specific groups such as women, indigenous populations, migrant workers and refugees, and to analyse the relations between extreme poverty and underdevelopment and the emergence and intensification of disabilities (paras. 15-19). His mandate was therefore

extremely broad, and in preparing his report he had drawn mainly on the replies to a questionnaire sent in by Governments, by various United Nations bodies, including the Centre for Social Development and Humanitarian Affairs in Vienna, by specialized agencies such as ILO and WHO, and particularly by non-governmental organizations representing disabled persons, without whose collaboration he would not have been able to conclude his task successfully and to which he wished to express his sincere thanks (paras. 20-22). As indicated in paragraph 23, the report comprised five chapters prepared in accordance with the plan of work contained in the 1988 progress report. Chapter I dealt with the legal issues. Disability was not only a humanitarian problem whose solution depended on the good will of citizens and Governments; there were also legal rules on the subject which had to be taken into account. Chapter II discussed the causes of disability, which also included violations of human rights. Chapter III described the various forms of discrimination against disabled persons. Chapter IV set out the national and international measures designed to protect disabled persons and guarantee them the effective exercise of their rights. Chapter V was concerned with public information, and the final part of the report contained his conclusions and recommendations.

4. In chapter I, he drew attention to the questions that arose with regard to the rights of the disabled. For example, did disabled persons have the same rights as others or did they have specific rights? If so, how were such rights established? Were they set forth essentially in mere declarations which offered no legal protection? Could the disabled enjoy legal protection simply because they were disabled or did they have to fulfil other conditions? Was there an effective right to equality of opportunity? The report then went on to review the standards set forth in international human rights instruments, particularly the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, and showed how the exercise of the relevant rights could be affected by disability. In that connection the report made particular mention of article 15 of the International Covenant on Economic, Social and Cultural Rights, concerned with participation in cultural life, and the provisions of the International Covenant on Civil and Political Rights involved in the case of the mentally handicapped. The report also mentioned other international conventions on issues that could be related to disability, such as apartheid, torture or the rights of the child, the important ILO conventions, and the regional instruments adopted within the Organization of African Unity and the Council of Europe, as well as the Inter-American Convention on Human Rights. Mention should also be made of the part played by the rules of international humanitarian law and the non-conventional provisions contained in resolutions of the General Assembly and other United Nations organs. An analysis of all those international instruments showed that the disabled had the same rights as other persons in general, but also specific rights - for example, the right to the services of an interpreter for the deaf-and-dumb. The chapter ended with a discussion of the complex question of terminology and definitions, on which he had consulted disabled persons.

5. In taking up the question of the causes of disability, treated at the beginning of chapter II, he had based his work on statistics and information supplied by WHO, which showed that at present there were approximately 500 million disabled persons in the world. In that connection a distinction

should be made between the general causes of disability which did not necessarily entail a violation of human rights and violations of human rights which led to disability. For the first category, the report contained some eloquent figures on the consequences of industrial accidents, traffic accidents and diseases such as poliomyelitis, measles and Chagas' disease. In the second category, the link between violations of human rights and disability had already been mentioned in reports on the human rights situation in Chile and Afghanistan. The Sub-Commission and the Commission on Human Rights were therefore beginning to work on that aspect of the question; the latter was even considering support for the evacuation of disabled persons in El Salvador. It was also known that as a result of violations of humanitarian law in Cambodia, more than 80 per cent of the refugees from that country were disabled. War, the use of chemical weapons and the bombing of refugee camps were also causes of disability among non-combatants, and more than three quarters of the victims of armed conflicts were reported to be women and children. It was deplorable that practically no documentation was available on the subject of disabled women. That was surprising in the case of a population group that was particularly well placed to know what discrimination was. The specific problems of other groups of vulnerable disabled persons such as refugees, indigenous populations and migrant workers who were the victims of two-fold or even three-fold discrimination because of their disability and particular situation, were also reviewed. Underdevelopment was also a source of disability and created a kind of vicious circle in which many disabled persons in third world countries could not contribute to the development of their country. Apartheid, too, was a cause of disability. It was noteworthy that in South Africa, for example, there was no black psychiatrist and that thousands of mentally ill Africans were treated by doctors who did not speak their language and had different cultural values. Finally mention must be made, among the causes of disability, of certain deliberately inflicted punishments and other kinds of treatment. Although that aspect of the question lent itself to controversy, he was nevertheless convinced that punishments such as amputation were contrary to international humanitarian law. The question of the treatment of the mentally ill and the question of scientific experiments also needed to be studied.

6. Chapter III was concerned with discrimination against disabled persons and chapter IV with the national and international measures that needed to be taken to eliminate it. In particular, he recommended the creation and development of associations of disabled persons, since it was through them that the whole question of human rights and disability had initially been raised. There was also a need to promote the rights of the disabled with regard to education, vocational training and employment, in accordance with the guidelines set forth in the World Programme of Action concerning Disabled Persons, which the Centre for Social Development and Humanitarian Affairs in Vienna was responsible for implementing. Mechanisms should be established both to promote the rights of the disabled and to put an end to violations. The information and education activities dealt with in chapter V of the report were also very important if the disabled were to be in a position to make an even greater contribution to society.

7. In the last part of his report he put forward some general recommendations so that the international norms concerning disabled persons could be incorporated into domestic legislation, in particular through the

Human Rights Committee and the Committee on the Elimination of Discrimination against Women. The Commission on Human Rights and the Sub-Commission also had a role to play in that respect. It would, moreover, be necessary to provide the Centre for Social Development and Humanitarian Affairs in Vienna with greater financial resources. The Centre for Human Rights in Geneva could also make a useful contribution through its advisory services programme. Nevertheless, the absence of a specific mechanism to promote respect for the norms concerning disabled persons was a serious problem. He therefore suggested, after having consulted many non-governmental organizations, that an ombudsman be appointed for that task. Consideration could also be given to entrusting the task to the Committee on Economic, Social and Cultural Rights, which had been created, not as the result of an international instrument, but by the Economic and Social Council itself as a body to supervise the implementation of the relevant Covenant. Such a solution would also make it possible to avoid the proliferation of new bodies by merely enlarging the mandate of an existing body, as had already been done in the same field in Latin America. Finally, consideration could be given to combining the two solutions and to have both an ombudsman and recourse to the Committee on Economic, Social and Cultural Rights. In conclusion, he thanked the Secretariat, Governments and non-governmental organizations which had helped him in his work and wished to stress the unprecedented fact that almost all Governments had replied to the questionnaires that had been sent to them.

8. Mr. JORDAN (International Fellowship of Reconciliation) welcomed the fact that a report on human rights and disability was being submitted to the United Nations. He was in a good position to speak of those matters, both through his long experience in the field of education and because he himself was deaf. Unfortunately, equal rights were not yet recognized for disabled persons; faced with that situation, the United Nations had adopted a Declaration on the Rights of Disabled Persons in 1975, followed in 1982 by a World Programme of Action concerning Disabled Persons, which dealt with both the equality of rights of disabled persons and their education problems. In the latter field, some important principles had been set forth in 1986 in a manual on the equalization of opportunities for disabled persons. Now all disabled persons welcomed the appearance of Mr. Despouy's report.

9. Fully equal access to education for the deaf posed a special problem. It should be pointed out from the outset that persons who could not hear and never would hear depended on interpretation into sign language in order to understand what was happening. To make education accessible to deaf children and adults, programmes therefore had to be made accessible by means of visual signs. At the XIth World Congress of the World Federation of the Deaf held in Tokyo in July 1991, which he had attended, the Special Representative of the Secretary-General for the Promotion of the United Nations Decade of Disabled Persons had stressed the need for the global recognition of sign language, which was now used at United Nations meetings in which deaf persons participated. Welcoming that development, he pointed out to those who considered that sign language was not an "official" language and that interpretation into it was not needed, that unlike persons who could learn a foreign language, deaf persons could never learn to understand any language at all. Sign language interpretation should therefore be provided in order to overcome an obstacle to communication, just as physical barriers were removed for the benefit of persons suffering from mobility disabilities.

10. At the Tokyo Congress, stress had been laid on equality and self-reliance. Although deaf persons had the same intellectual capacities as those who could hear normally, they lagged badly behind in education, even in the most advanced countries, and the situation was far worse in less advanced countries. That situation had to change, and that was why the outcome of the present debate was awaited with interest. The Sub-Commission could perhaps help to change the attitude of able-bodied persons who continued to have a negative perception of the disabled. That was possible, as was attested by what had occurred three and a half years previously at Gallaudet University, the only university specifically intended for deaf students. There the students had mobilized in order to demand the election of a deaf president instead of a new president whose hearing was in no way impaired. It was clear that deaf and other disabled persons could perform their functions perfectly provided they received the best possible education. With education and equal opportunity, disabled persons, who were at the same time the largest minority and the most underutilized resource in the world, could help to improve it. The International Fellowship of Reconciliation was ready, for its part, to help the Sub-Commission to vindicate the rights of disabled persons in all fields.

11. Mrs. SCOGGINS (World Association for World Federation) said that disabled persons were subjected to the worst form of discrimination, since they were not considered to be "normal" persons. She herself, who was deaf and expressed herself in sign language to communicate her recommendations to the Sub-Commission, was on the way to obtaining a doctorate; other disabled persons, too, had made important contributions in various fields.

12. The problem of drug and alcohol abuse among disabled persons was particularly serious, since it affected at least 35 per cent of most disabled groups, which were exposed to isolation, rejection, stigmatization and, indeed, discrimination by society. A special programme had been set up by her Association to combat that problem among the deaf community in the Los Angeles area. Discrimination was the primary factor contributing to the abuse of chemical substances in American culture.

13. In the Declaration on the Rights of Mentally Retarded Persons and in the Declaration on the Rights of Disabled Persons which it had adopted in 1971 and 1975 respectively, the General Assembly had proclaimed that those persons had the same rights as other human beings. In 1981 the International Year of Disabled Persons had led to the adoption of the World Programme of Action concerning Disabled Persons, which recognized the right of all human beings to equality of opportunity. The United Nations Decade of Disabled Persons would come to an end in 1992. The General Assembly was to be congratulated on having taken those initiatives to promote the rights of disabled persons throughout the world.

14. With particular reference to the problems of access with which disabled persons were confronted, it would be helpful if the Sub-Commission could supplement the list of improvements to be made to United Nations premises by also making it possible for disabled persons to have access to United Nations debates, with a view to promoting the "equalization" mentioned in the World Programme of Action concerning Disabled Persons. She herself could participate in the present debate only by means of sign language. In

conclusion, she unreservedly supported Mr. Despouy's report on human rights and disability, particularly the idea of appointing an ombudsman to ensure that action was taken on United Nations resolutions on the subject.

15. Mrs. MERCHANT (International Council of Psychologists) said that she herself was a handicapped teacher and was pleased to state that a number of her handicapped students had succeeded in entering fields as diverse as teaching, the sciences, the arts and law. A tribute was due to the United Nations which, being firmly committed to improving the lot of disabled persons, had adopted as early as 1971 the Declaration on the Rights of Mentally Retarded Persons in which it had affirmed that those persons had the same rights as other human beings. Much progress had been made since then, as was shown by the terminology used, which had become much more positive and less insulting. The dignity of the persons involved was thus better preserved and serious crises of identity were avoided. However, the problem was far from being solved for all of them; for example, in the developing countries, in which approximately 80 per cent of the world's disabled population was to be found, the situation was sometimes described as a "silent emergency".

16. In 1975 the General Assembly had adopted the Declaration on the Rights of Disabled Persons, which recognized that they had the same civil and political rights as other human beings and provided for treatment and services that would develop their capacities to the maximum and hasten their integration into society. The General Assembly had then proclaimed 1981 as the International Year of Disabled Persons and had decided that the rights of the disabled, their full participation and equality, would be the main themes. An effort had therefore been made to induce all sectors, institutions and individuals to take an interest in the disabled and to encourage the latter to set up organizations capable of stating the problems caused by disability and of proposing remedies. The main obstacle to the realization of their full potential was the image which society had of disabled persons, an image that therefore had to be changed. The United States of America had taken a step in that direction - and others were committed to do the same - with the adoption of the Disability Act, which should make it possible for the disabled to make the important contributions to society in fields such as the arts, the sciences and technology which they were capable of providing. A weak body could host a great mind. Action should be taken ranging from the purely material level - transport and access to buildings and toilets - to fields such as education and medicine. One of the most useful steps that the United Nations could take would be to make Braille one of its official languages.

17. Mrs. LEWIS (World Conference on Religion and Peace) said that she was particularly concerned about disabled homeless persons. There were 1 billion inadequately housed or homeless persons, 300 million of whom were disabled because of poverty and malnutrition. The world must be made aware of their existence and of the atrocious conditions in which they lived. They were the victims of social injustice and of war. In the United States of America, at least five and a half million children were hungry or chronically undernourished. The most threatened families were those in which the mother was the head of the family and which sometimes lived far below the poverty line. The poorest families, whose budget was burdened by the high cost of housing, could not escape hunger and its concomitant incapacities. They soon

reached the point of homelessness and their entire existence was then devoted to mere survival. Depression followed, often accompanied by serious emotional and physical disabilities. Their desperate situation and their repugnant living conditions, compounded by their inner isolation, caused their fellow-citizens to shy away from them.

18. When the homeless were discarded, humanity as a whole was discarded. It might be advisable for the Sub-Commission to reflect on any relationship between the situation of the homeless and the over-zealous militarism in the world. Was not the death of over half a million people in Iraq due to the hardening of hearts when faced with the misfortune of millions of people who, in the countries allied against Iraq, themselves died of hunger, disease and malnutrition? The increase in the numbers of homeless persons was a clear indication of the inhumanity of those countries, and the Special Rapporteur had done well to mention that suicidal trend. The World Conference on Relgion and Peace suggested that the Sub-Commission request the holding of an international meeting to study the situation of the homeless and condemn evictions as a violation of the international right to housing.

19. Mrs. CLARK (International Catholic Child Bureau) drew the Sub-Commission's attention to disabled children, who, according to the Special Rapporteur himself, accounted for at least 10 per cent of the disabled population. She was glad that in 1985 the Commission on Human Rights had stressed the need to guarantee them equal access to education and employment, since the better educated a disabled young person was, the better chances he had in the working world. The United Nations Decade of Disabled Persons should not be allowed to end without encouraging Member States to adopt effective legislation on disabled children and young people. The United Nations had already done some good work with the Convention on the Rights of the Child, which also concerned disabled children. The public must also be informed and employers must be taught that a deaf person could do something more than wash up; he could drive a car, lip-read, speak - in a word communicate and therefore do all kinds of jobs. The United Nations initiative, with its goal of making society open to all by the year 2010, was highly commendable.

20. Mrs. NOLAND (International Association of Educators for World Peace) emphasized the stimulating role which the disabilities media could play in the pursuit of equality for disabled persons and their full integration into society. The disabilities media must be taken just as seriously as mainstream media, since they were participating in the campaign for civil rights. At the same time, the mainstream media must give all due importance to the question of disabled persons and report regularly on the conditions in which they lived - discriminatory practices, segregation, the availability or non-availability of funding allocations - as well as on disabled persons themselves, just as they did with all issues and persons of regular interest to the nation. A disabled person needed help, equipment, an interpreter and various devices, but he could lead an independent professional life, as in her own case.

21. Information, both for the disabled and for the rest of the population, was vital. The problems had to be made known, as well as the resources, techniques, legislation - shortly, it was to be hoped, in the form of an

international instrument - and the battles waged for the allocation of funds to enable the disabled to receive the assistance they needed in order to lead an independent life. In that connection it should be borne in mind that some disabled persons preferred to die rather than to live in an institution. She joined her predecessors in praising the United Nations for the interest it was taking in disabled persons and for the resolutions which it adopted to help them to advance along the road which should lead them to equality, freedom, and open access to what was available to the rest of the population. What was now needed was a mechanism to implement those resolutions.

22. Mrs. SPALDING (Human Rights Advocates) congratulated the Special Rapporteur on the very moving report which he had submitted and on his profound understanding of the issues to which disability gave rise from the viewpoint of human rights. The most important issues were prevention and accountability. They would be dealt with more fully in writing, but she already wished to express her support for the idea of creating, as Mr. Despouy had proposed, a post of "ombudsman" working in collaboration with a body in which NGOs would be represented to develop a juridical mechanism through which real accountability could be ensured. In conclusion, she quoted a few words of hope spoken by Mr. Ralph Bunche, a former Under-Secretary-General, who had stated that he was convinced that, despite all his frailties and follies, man would not only survive but, through the unlimited creative capacity of his genius, would continue to advance.

PROTECTION OF MINORITIES (agenda item 18) (continued) (E/CN.4/Sub.2/1991/43; E/CN.4/1991/53 and Corr.1; E/CN.4/Sub.2/1990/46)

23. Mr. PHILLIPS (Minority Rights Group) welcomed the fact that in both of Mr. Eide's reports (E/CN.4/Sub.2/1990/46 and E/CN.4/Sub.2/1991/43) it was established at the outset that a minorities problem existed, since the recognition that a problem existed was always the first step towards solving it. In fact, minorities were involved in two thirds of the world's 111 major conflicts. The Conference on Security and Cooperation in Europe (CSCE), which had also dealt with the question, had itself concluded that the minorities problem was a legitimate subject of international concern and therefore did not fall exclusively within the competence of the States directly concerned. The second stage in resolving a problem was to accept that the problem might be perceived in different ways by different actors and that, to arrive at a proper understanding of it, it was therefore necessary to know all the points of view. That was, however, one of the weaknesses of Mr. Eide's study: minorities had not been directly consulted, and that amounted to their continuing marginalization. Although too much concern should not be read into the fact that few Governments had so far replied to the questionnaire sent to them by Mr. Eide, since they still had time to do so, it was regrettable that the Centre for Human Rights did not have sufficient resources, particularly in personnel, to be able to analyse the information collected. Member States and the United Nations should make an effort to allocate the necessary funds for the completion of such an important study.

24. In reply to a question put by Mr. Eide in paragraph 16 of his latest report (E/CN.4/Sub.2/1991/43), the Minority Rights Group considered that the study should deal not only with ethnic and linguistic minorities but also with

religious minorities, which had often been neglected in previous studies As Mrs. Daes had stated, past legal practice at the national, regional and international levels could also provide examples of the various methods adopted to improve approaches to different minority situations. Furthermore, it might in fact be useful, as Mr. Eide seemed to think, to try to find an international rather than a national settlement of minority problems, but only in cases where it was established that the minority concerned was the victim of systematic discrimination within the national system. Also essential was the political will of the different communities to live together in peace and harmony and to share power and available resources equitably; the international community could certainly help them to settle their differences by peaceful means. The existing international procedures for the settlement of conflicts could play an important role in that regard and should not be overlooked.

25. The United Nations advisory services and technical assistance programme could play a vital role in developing new projects and building up confidence between minority and majority populations and could provide the resources needed to stimulate inter-community cooperation. However, many Governments did not apply for advisory services out of fear that a request for assistance would be interpreted as an admission that human rights violations were taking place in their countries. An effort should be made to convince them that such was by no means the case and that the provision of assistance by the United Nations did not constitute evidence that the Governments concerned had something to reproach themselves for. Anyhow, the States which had participated at the most recent CSCE meeting, at which they had given many examples of the conceivable positive approaches referred to by Mr. Eide in paragraph 10 of his report (E/CN.4/Sub.2/1991/43), should be invited to provide them to Mr. Eide to help him with his study. The Minority Rights Group itself had changed its approach in recent years and was now trying to put forward constructive solutions for the future based on an honest analysis of the problems and situations involved and was willing to supply the Special Rapporteur with copies of its publications on the question.

26. In conclusion, the Minority Rights Group invited the Sub-Commission to recommend that resources be allocated for the preparation of the report as a matter of priority, that the progress report and questionnaire drawn up by Mr. Eide be distributed to minority groups, that the conclusions of the CSCE Expert Meeting on Minorities be taken into account, that the specialized agencies, non-governmental organizations and Governments be encouraged to provide further information, and that the United Nations advisory services and technical assistance programme be extended to minorities.

Mrs. Bautista took the Chair

27. Mr. TZELIOS (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) deplored the fact that 43 years after the General Assembly's adoption of resolution 217 C (III) on the fate of minorities, not only had the minorities problem not been solved but it had taken on alarming proportions. The organization which he represented was particularly concerned by the situation of certain minorities in various countries in the world. For example, in Iraq the flagrant violations of the rights of the Kurds and other minorities such as the

Shi'ite Muslims were continuing unabated and it would be useful, as Amnesty International had proposed, to establish a permanent human rights monitoring operation there to protect the rights of the minorities concerned. The serious violations to which citizens accused of "collaboration" and Palestinians, among others, were being subjected to in Kuwait should also be denounced, since respect for basic human rights must be guaranteed in the same way everywhere.

28. For several years grave and massive violations of human rights had been committed in Albania, such as those perpetrated against members of the Greek minority, who could not, in particular, exercise their right to a proper education in conformity with their ethnic, cultural, religious and linguistic identity. The right to freedom of religion had not yet been restored, even though the Penal Code had been amended to that effect, and Orthodox priests were still not allowed to enter Albania unless they were Albanian nationals. Furthermore, the distribution of humanitarian and financial aid from abroad was not guaranteed. The Albanian Government should take the necessary steps to prevent such discriminatory practices. In addition, the first multiparty elections in Albania, which had taken place in 1991, had not been held in conditions that were equitable for members of the opposition. Political groups with links with religious or ethnic minorities were not entitled to participate in the elections under a new law adopted by the Albanian parliament; that law constituted a serious violation of the rights of minorities in Albania and should therefore be repealed forthwith. Finally, the Albanian Government was continuing to encourage the settlement of non-Greeks in areas and on lands which had belonged to the Greek minority for centuries. That did not facilitate the search for a peaceful and constructive solution of current problems and could only stir up hatred among the population and constitute a serious threat to peace and tranquility in the region. His organization therefore called upon the Albanian Government to carry out reforms with a view to restoring the rule of law and to guaranteeing respect for basic human rights, to release immediately all political prisoners and prisoners of conscience, and to take measures to guarantee the compensation and rehabilitation of the thousands of victims of gross violations of human rights and fundamental freedoms. It also urged Albania to ratify the International Covenants on Human Rights and to establish a constitutional framework providing effective guarantees for the protection of human rights, including the rights of the Greek minority. As the Commissioner for External Relations of the European Communities had stated, it was only in those conditions that Albania could receive economic aid from the international community. His organization hoped that the Albanian Government was willing to act in concert with the United Nations and other governmental and non-governmental organizations with a view to fulfilling its human rights obligations and urged it to respect the rights of minorities in Albanian territory, since the way States treated their minorities was a measure of the extent to which they were democratic.

29. Mr. TREAT joined other speakers who had praised the excellent work done by Mr. Eide. He also expressed the hope that the remarkable statement made at Notre Dame University in Indiana would be photocopied and circulated. Referring to the comments made by Mrs. Daes concerning affirmative action in favour of particular groups, often called "positive discrimination", he pointed out that the problem was a sensitive one, especially in the

United States of America, where many different nationalities lived together and it was difficult to ensure that they were represented in various posts and sectors in proportion to their numbers, as they desired. Merit and ability also had to be taken into account. The Government was currently taking affirmative action but without establishing quotas, which were sometimes contrary to the interests of certain population groups. In so doing it intended to promote diversity, but it had to act with a great deal of tact. It was a long-term problem which had to be solved not only by legislation but also by the evolution of society and, primarily, by education. He unreservedly supported Mrs. Daes' proposal that Mr. Eide be given the possibility of visiting other countries with the assistance of the Centre for Human Rights so as to be able to meet minority groups in their own setting and to collect the necessary information, which he could obtain more easily in that way than by sending out questionnaires, the replies to which often arrived late or were disappointing or did not arrive at all.

30. Mr. TURK paid a tribute to Mr. Eide, who had been engaged in a long and exacting task and had displayed a remarkable ability to deal with particularly complex problems. The issues raised by minority situations were rooted in history, and the solutions to them, especially peaceful and constructive solutions, could not be applied overnight. For example, it had taken more than 40 years for Austria and Italy to conclude, through legal procedures but above all by political wisdom, that the conflict between them regarding the provinces of Bolzano and Trento could be considered as settled. The Special Rapporteur's task would therefore be mainly to determine, in the light of each situation, which legal norms should be applied and what were the wisest policies to be pursued. It was an arduous task, and he hoped that the Secretariat would give Mr. Eide its strongest support.

31. As for the substance of the report, he agreed with Mr. Khalifa that the scope of the study should be further reduced to keep it within reasonable limits. It should be considered as one part of the long series of studies undertaken by the Sub-Commission on the protection of minorities. The questions which had been dealt with had included the definition of what constituted a minority and the classification of minorities. As far as the definition was concerned, Mr. Eide was absolutely right in thinking a single and comprehensive definition was neither possible nor useful. States had refined it to the point of absolving themselves of all accountability vis-à-vis minorities. It was a trap which must be avoided. The essentially political character of the problems involved must not be overlooked. By keeping within the limits of the concept of minorities as it had evolved within the Sub-Commission since the 1950s, the Special Rapporteur would succeed in keeping his study within reasonable proportions.

32. Mr. Khalifa maintained that most minorities were not content with protection but aspired to much more. The matter would have to be closely examined, but he himself was tempted to believe the contrary. If the study was confined to minorities that had been established for a long time in a particular territory and whose problems had always been dealt with in a clearly delimited context, it would be found that most of them were satisfied with the protection provided for them by traditional international law. For Mr. Khalifa's benefit, he pointed out that, of the population of Macedonia, 67 per cent were Macedonians, 19.8 per cent were Albanians, who constituted

the largest minority, 4.5 per cent were Turks, who constituted the second largest minority, and there were various other ethnic groups. That particular ethnic mix went back a very long time, and in his opinion the Special Rapporteur would have many other priorities more important than that question.

33. The Special Rapporteur might begin his study by considering minorities whose identity was already recorded in history, even if that meant enlarging the scope of his study later on. In the case of groups that had been formed as a result of more recent migration, including migrant workers, the greatest prudence was called for. The question had to be thoroughly studied, with all its political implications, but account must also be taken of its legal aspects. The United Nations had adopted an instrument, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which defined a vast legal framework in which a large number of the issues facing migrant workers could be treated. Their needs and rights must therefore be considered in the context of that Convention, whose provisions were far more developed and precise than those of any other instrument concerned with minorities. It was therefore inadvisable to embark upon a course of action in which many difficulties might be encountered even while remaining within the rules prepared in the United Nations.

34. The Special Rapporteur took as his starting point the principle of non-discrimination. However, non-discrimination must be understood to mean de facto equality, which was much more than equality before the law and justified affirmative action in favour of minorities, as Mrs. Daes had already pointed out. But there again care was needed, since Governments had a great deal of latitude in that respect and each one defended its own policy as being the one most likely to secure de facto equality. It was at precisely that point that the debate between advocates of the assimilation of minorities and advocates of the affirmation of their identity came into the picture. In practice, the policies pursued by States varied enormously, and he recommended the Special Rapporteur to examine policies implemented in different countries and regions so that next year he could offer the Sub-Commission a reply to the question as to how the idea of affirmative action could be envisaged at the world level, in a global context. In Europe, for example, national minorities were an historical fact. It might be thought that education policies would be the same there, whereas the reverse was true since in actual fact there were three alternative policies: the teaching of the minority language, teaching entirely in the minority language, and bilingual teaching. In any case, what was important was that the minorities concerned should be consulted before any policy was adopted concerning them.

35. He then turned to the question of the dangers which ethnic conflict could pose for security, mentioned by Mr. Eide. That was a sensitive issue which might not really be within the Sub-Commission's competence. It was extremely political and could distort genuine human rights issues. To attribute political problems to minorites, as had happpened so often in the history of Europe, was only too easy, and most of the time the real causes of tensions must be sought in issues other than minority issues, which could easily be manipulated. If the Special Rapporteur was to continue to study the question, he ought to take a close interest in the methods used to manipulate minority problems for different purposes. The role of States other than the State in

which the minorities concerned lived should also be considered. The problem was complex and many-sided. It raised very diverse issues: human rights issues, essentially international issues, and issues which arose in a particular regional context. Only after all those issues had been studied could the issue of the use of force be taken up. There again, the greatest circumspection should be exercised.

36. Finally, further consideration needed to be given to the protection of the rights of majorities (guideline No. 6), and he wondered whether minorities really could be said to constitute a threat to the majority. As a consequence, conceptual and legal questions arose. The solution lay in respect for the human rights of everyone; the rights of minorities could not take precedence over universally recognized human rights. Furthermore, an individual who objectively formed part of a minority should in any case have the choice of deciding whether or not he identified himself fully with that minority. In conclusion, he hoped that the Special Rapporteur would be given the time and resources needed to study all those questions, of which he himself had taken up only a few aspects.

37. Mr. HELLER said that he had three specific points to raise concerning Mr. Eide's report. First of all, there was the problem of definitions. It would be important to state all the elements of a definition, bearing in mind the specific nature of each situation. Also, if refugees and migrants were included in the study, the essential objective of the Sub-Commission's work might be lost from sight. Next, account should be taken of demographic issues, of the distribution of the minorities concerned within the territory under consideration, since quite often several States were involved, a factor which further complicated the problem. Finally, account could be taken of the composition of the State, since there were cases in which social structures had been inverted and where, for example, indigenous populations constituted in fact a majority without holding any power at all, thus finding themselves in the position of a minority. In any case, it was difficult to draw up a model formula, since each case had its own specific features.

38. Mr. Eide's report should focus on constructive solutions that could be found for conflicts involving minorities. It would therefore be necessary to study in greater depth situations where there was a danger of conflict and, when a trend was shaping, to advocate dialogue. It would also be necessary to pay attention to how minorities were organized and to what kind of claims they were making. In that connection it would be advisable for the study to include an annex, since there was some confusion between the claims of minorities according to whether they sought protection of their rights, aspired to self-determination, or wanted self-determination inside or outside the established structures in which they found themselves. As for the questionnaire sent out to Governments, although it was a good idea to ask Governments for their opinion, the picture that emerged from the replies was all too often artificial, since, although there were in fact well integrated minorities that enjoyed their rights to equality with the majority, the Sub-Commission was interested in situations involving conflict. The questionnaire therefore distorted the problem a little.

39. Mr. TIAN Jin pointed out that human rights issues always had a political aspect. One could even go as far as to say that the question was purely political. In any case, it was difficult to decide between what was political and what was not. In the report the political aspect of the question should therefore be brought out and specific cases should be placed within their political context.

40. Although the term "non-discrimination" itself was to be found in many basic texts, it might be advisable to use the expression "mutual respect", based on equality - meaning equality among nationalities, equality among religious groups, and so on. It was a more positive term than non-discrimination. The whole of society should be mobilized around the principle of mutual respect, which should be the keynote of any Government or minority group. The term "self-determination" was open to controversial interpretations, and it would be preferable to speak - as in Chinese, for example, - of autonomy.

41. It might be better not to raise the question of religious minorities for the moment, since that issue was a very extensive and highly complex one. The situations concerned occurred in a very complicated historical context and should in any case be examined in greater depth. In any event, the debate at the present session had been inadequate and could be resumed in 1992, after more replies had been received from Governments.

The meeting rose at 6.05 p.m.